



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,957	03/07/2002	Kenneth M. Yates	CARR-0083 (103216.00251)	7354
25555	7590	08/26/2004		EXAMINER
JACKSON WALKER LLP 2435 NORTH CENTRAL EXPRESSWAY SUITE 600 RICHARDSON, TX 75080			PRATS, FRANCISCO CHANDLER	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES DEPARTMENT OF COMMERCE

## U.S. Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---	---------------------

10/092,957

EXAMINER
----------

ART UNIT	PAPER
----------	-------

08252004

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

## Commissioner for Patents

The amendment filed on June 1, 2004, results in the presentation of only claims drawn to a non-elected invention, and is therefore non-responsive (MPEP § 821.03). The pending claims are not readable on the elected invention because in the restriction requirement of November 5, 2003, applicant was afforded the opportunity to elect claims directed to a composition comprising a plant solid and polyvinylpyrrolidone, i.e., group II. Instead, applicant chose to elect group I, directed to a composition comprising a plant solid and a polymeric carrier, in a specific physical form (drink mix, tablet, or capsule). See election, filed December 8, 2003. This election was made without traverse. Now, in response to an office action demonstrating lack of novelty of the elected invention, applicant attempts, by amendment, to shift their election to the subject matter of group II, subject matter clearly non-elected, without traverse, in the original election made by applicant. Applicant may not, as a matter of right, make such a shift with respect to their election. See MPEP § 819.

In sum, because the amendment of June 1, 2004, changes all claims under examination to read on group II, which was non-elected *without traverse*, a holding of non-responsiveness is clearly proper.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.



Francisco C Prats  
Primary Examiner  
Art Unit: 1651